

Chapter 347. Title IV-E Federal Foster Care Programs***Published Standards Without Commentary***

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§347.1. Introduction.

(a) The Texas Department of Protective and Regulatory Services (TDPRS) is the state agency in Texas that administers Title IV-E of the Social Security Act (42 United States Code §670 et seq.). The federal government reimburses TDPRS for part of the foster care costs of eligible children served by TDPRS. This law was enacted to establish a program of adoption assistance, to strengthen the program of foster care assistance for needy and dependent children, to improve the programs for child welfare, social services, and aid to families with dependent children, and for other purposes. In addition, to be eligible for this program, TDPRS must manage the cases of eligible children in compliance with standards set in the Social Security Act, 42 USC §622. These requirements ensure careful management of a child's case. They require a case plan and a case review system designed to return children to their families or some other permanent plan at the earliest possible date. They require a system to track the location of children in placement, even when they run away. It also includes protection of families' and children's rights.

(b) The Texas Juvenile Probation Commission (TJPC) has contracted with TDPRS to make these federal funds available to reimburse part of the foster care costs of eligible children in the juvenile justice system. TJPC is willing to contract with any juvenile board which meets the federal requirements for Title IV-E and the Social Security Act, 42 USC §622. A juvenile board that wants to contract with TJPC to access these funds must perform in the ways described in the following rules, and in certain rules of the TDPRS referred to in these rules.

§347.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Periodic review--A review open to the participation of the caregiver and parents of the child. The purposes of the review are to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, the extent of progress on issues that led to the child's removal from the home, and to project a likely date for permanency.

(2) Aid to families with dependent children (AFDC)--A financial assistance program available to low-income families who meet categorical requirements described in 40 TAC Part 1, Chapter 3. The AFDC program has been renamed Temporary Assistance for Needy Families (TANF). However, Title IV-E eligibility continues to be based on AFDC criteria in effect on July 16, 1996.

(3) Billing level of care--Rate of payment based on the level of services a facility is licensed or approved to provide.

(4) Caregiver or substitute care facility--Any IV-E approved facility or foster family.

(5) Date of actual placement--The date the child enters an eligible foster care setting.

(6) Disposition order--A court order that results in the child's placement in substitute care.

(7) TJPC eligibility specialist--A person employed and trained by TDPRS to make IV-E eligibility determinations.

(8) Initial order of removal--The first order that removes the child from the home and which culminates in the child's placement in substitute care without the child having returned to the home.

(9) Juvenile board--An administrative body established by state statute that is responsible for the provision of juvenile probation services within a defined jurisdiction.

(10) Juvenile court--A court designated by the juvenile board under the Texas Family Code, §51.04, or other state law, which hears cases involving delinquent conduct or conduct indicating a need for supervision.

(11) Level of care--A numerical rating based on an assessment of the services a child will need while in substitute care.

(12) Permanency hearing--A judicial hearing required by 42 USC §675. The hearing must be held no later than 12 months after the child's date of actual placement in a Title IV-E approved facility, and every 12 months thereafter throughout the child's stay in substitute care.

(13) Permanency plan--A description of the planned living arrangement for the child following a stay in substitute care. It may include, but is not limited to:

- (A) return to parent;
- (B) placement with a relative(s);
- (C) adoption;
- (D) emancipation/independent living; or
- (E) another permanent living arrangement.

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(14) Reasonable efforts--Judicial findings regarding efforts made to prevent or eliminate the need to remove the child from the home, and if the child must be removed, judicial findings regarding efforts made to finalize the permanency plan.

(15) Specified relative--A relative within the degree of relationship specified under AFDC rules with whom the child lived within six months prior to removal from the home.

(16) Substitute care--The placement of a child in a foster home, residential treatment center, or other child care institution.

(17) Texas Department of Protective and Regulatory Services (TDPRS)--The state agency responsible for the administration of the Title IV-E program in Texas.

(18) Title IV-E (IV-E)--A federal foster care program established under 42 USC §670 et seq. which, among other things, assists states with the cost of care for children who qualify for financial assistance through the Aid to Families with Dependent Children Program, and who meet the eligibility requirements described in 42 USC §672(a).

(19) Title IV-E approved facility--Facilities licensed and/or approved by the Texas Department of Protective and Regulatory Services (TDPRS) for Title IV-E participation.

§347.5. Specific Language Required in Court Orders.

(a) The initial order of removal shall be issued no later than six months after the last day on which a child lived with a specified relative and shall include one of the following findings:

(1) "The court finds that it is in the best interest of the child for the child to be placed outside of (his or her) home"; or

(2) "The court finds that continuation in the home is contrary to the child's welfare".

(b) The initial order of removal or any subsequent orders shall include the following additional findings:

(1) "The court finds that reasonable efforts have been made to prevent or eliminate the need for the child to be removed from (his or her) home, and to make it possible for the child to return to (his or her) home";

(2) "It is ordered that the (name of county in which the court's jurisdiction arises) juvenile probation department be responsible for the child's care and placement"; and

(3) "The court finds that the child has been removed from (his or her) home and the court approves the removal."

(c) The safety of the child is of paramount concern when determining the level of reasonable efforts that are necessary.

(d) This finding must be entered within 60 days of the child's removal from the home; and

(e) A child is not IV-E eligible until the findings described in subsection (a) and (b) of this section have been made and all other IV-E eligibility requirements are met.

(f) Findings regarding reasonable efforts and best interest of the child must be based on documentation of the child's specific circumstances and so stated in the court order.

§347.7. Screening and Eligibility of IV-E Juveniles.

(a) The juvenile board shall ensure that the juvenile probation department develops and implements a procedure to screen all children placed outside the home by the juvenile court for the following IV-E eligibility criteria:

(1) whether court orders used to remove the child from the home contain language required by §347.5 of this Chapter; and

(2) whether the child would have been eligible for AFDC at the time of removal from a specified relative; and

(3) whether the child has been placed in a IV-E eligible setting as described in §347.9 of this Chapter.

(b) If a child meets the requirements in subsection (a) of this section the juvenile probation department shall complete and submit to TJPC within 30 calendar days of the child's date of actual placement a foster care assistance application with all required attachments.

(c) TJPC shall forward the application to the Eligibility Specialist who shall determine the child's IV-E eligibility and notify TJPC in writing of the child's IV-E eligibility status. TJPC shall notify the juvenile probation department of the determination.

(d) A juvenile probation department has the right to appeal any eligibility determination. The department shall submit the appeal to TJPC in writing. TJPC shall forward the appeal to TDPRS for a ruling and report the results of the ruling to the department.

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§347.9.Placement in IV-E Approved Facilities.

(a) Facilities shall be licensed or approved by TDPRS to be eligible for Title IV-E participation.

(b) Facilities eligible for IV-E participation include:

(1) private residential facilities which are licensed or certified as:

(A) an emergency shelter;

(B) a foster family home;

(C) a foster group home;

(D) a therapeutic foster family home;

(E) a therapeutic foster group home;

(F) a residential treatment center;

(G) a maternity home;

(H) a halfway house;

(I) a child placing agency;

(J) a therapeutic camp; or

(K) a basic child care facility as these facilities are defined in 40 TAC Chapter 720.

(2) public residential child care institutions which:

(A) meet the definition of one of the facilities in paragraph (1) of this subsection;

(B) are licensed or certified for no more than 25 children; and

(C) are not operated primarily for the detention of children determined to be delinquent.

(c) Facilities not licensed by TDPRS shall comply with minimum licensing standards equivalent to those described in 40 TAC §720.

(d) A juvenile board may assist a facility who meets the requirements of subsection (b)(1) or (b)(2) of this section in obtaining approval from TDPRS for IV-E participation by ensuring that the following information is provided to TJPC:

(1) the type of license or certification held by the facility;

(2) the agency that issued the certification or license;

(3) whether the facility is a private residential facility or a public residential child care institution as those terms are defined in subsection (b)(1)(2) of this section;

(4) a description of the facility;

(5) a description of the services provided by the facility and corresponding per diem rates; and

(6) a copy of the written agreement between the facility and the juvenile probation department, if one exists.

(e) For programs operated by a juvenile board and administered by a juvenile probation department, the juvenile board shall verify that upon approval for participation in the Title IV-E program, the department shall:

(1) complete cost reports as required by TDPRS and obtain approval of the report by an independent auditor;

(2) implement procedures to ensure compliance with TDPRS or equivalent licensing standards; and

(3) allow TJPC or its designee to conduct quality assurance monitoring to measure compliance with levels of service provision as determined by TDPRS standards.

(f) For private facilities that are approved for participation in the Title IV-E program but that are not under contract with TDPRS, the juvenile board shall ensure that the provider:

(1) completes a cost report as required by TDPRS and obtains approval of the report by an independent auditor;

(2) implements procedures to ensure compliance with TDPRS or equivalent minimum licensing standards; and

(3) contracts with an independent party to measure compliance with levels of service provision in accordance with TDPRS standards.

§347.11.Eligibility Recertification.

(a) The juvenile board shall ensure that the juvenile probation department administers a process to recertify a child's IV-E eligibility status twelve months from the child's date of actual placement and every twelve months thereafter.

(b) The juvenile board shall ensure that the juvenile probation department:

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(1) develops and implements procedures to track each child's IV-E eligibility status and recertification date; and

(2) submits to TJPC the foster care assistance review information every twelve months and when changes affecting eligibility occur.

(c) TJPC shall forward the foster care assistance review information to the Eligibility Specialist who shall make a redetermination of the child's IV-E eligibility and notify TJPC in writing of the child's eligibility status. TJPC shall notify the department of the determination.

(d) A department has the right to appeal any eligibility determination as described in §347.7(d) of this chapter.

§347.13.Family Reunification.

(a) The Child/Family Case Plan includes family reunification services. The juvenile board shall ensure that the juvenile probation department:

(1) assesses the home situation and offers services to the family to help them safely resume supervision, care, and control of the child;

(2) plans for permanent placement for a child, if a child cannot safely return home; and

(3) documents in the child's case record a chronology of all contacts and services offered to the family, child, and caregiver.

(b) The juvenile board shall ensure that the juvenile probation department maintains contact with the child, the child's family, and the caregiver monthly, or more frequently as required by the child/family case plan.

§347.15.Case Plan and Review System.

(a) The juvenile board shall ensure that the juvenile probation department develops a case plan that meets the requirements of 42 USC §675 for each IV-E eligible child within 30 calendar days of the child's date of actual placement. The case plan shall outline actions designed to facilitate the safe return of the child to his or her own home or other permanent placement and assure that the child receives safe and proper care while in substitute care.

(b) The status of each IV-E eligible child shall be reviewed periodically but no less frequently than once every six months from the date of actual placement.

(1) The purpose of the review is to determine:

(A) the safety of the child;

(B) the continuing necessity for and appropriateness of the placement;

(C) the extent of compliance with the case plan;

(D) the extent of progress on issues that led to the child's removal from the home; and

(E) to project a likely date for permanency.

(2) The review may be a judicial review or an administrative review, and shall be open to the participation of the parent and the caregiver.

(3) If the review is an administrative review, it shall be conducted by a panel of appropriate persons, at least one of whom is not responsible for the case management of or the delivery of services to either the child or the parents who are the subject of the review. Others with a legitimate interest in the child's welfare who may participate in the review include the juvenile probation officer, the probation officer's supervisor, the child's counselor, the child's attorney, guardian ad litem, and a representative from the child's school.

(c) A permanency hearing open to the participation of the parent and the caregiver shall be held for each child no later than 12 months after the child's actual date of placement and every 12 months thereafter. The juvenile board shall ensure that the juvenile probation department provides sufficient information for the court to review the child's status as described in subsection (b) of this section and to determine whether:

(1) the permanency plan for the child is appropriate;

(2) reasonable efforts to finalize the permanency plan have been made;

(3) for a child 16 or older, services are needed to assist the child in the transition to independent living;

(4) for a child placed outside the state, whether the placement continues to be in the best interests of the child; and

(5) procedural safeguards have been applied regarding parental rights to notification regarding removal of the child from the home, any change in the child's placement, and any determination affecting parental visitation privileges.

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(d) In accordance with 42 USC §675(5)(E), the juvenile probation department shall notify the appropriate local entity responsible for filing a petition to terminate parental rights for any child who has been in substitute care under the responsibility of the juvenile court for 15 of the most recent 22 months unless:

- (1) the child is being cared for by a relative; or
- (2) the child's case plan includes documentation of the compelling reason that such a petition would not be in the best interests of the child; or
- (3) the family has not been provided services described in the case plan as being necessary for the safe return of the child to the child's home.

§347.17. Information System.

(a) The juvenile board shall ensure that the juvenile probation department maintains a system to track at least the following for children in substitute care:

- (1) current level of care;
- (2) name;
- (3) date of birth;
- (4) ethnicity;
- (5) sex;
- (6) present location;
- (7) permanency plan; and
- (8) who is responsible for the child's care and placement.

(b) The juvenile board shall ensure that the juvenile probation department notifies TJPC within 5 days of any changes in the child's location or any other change that would affect the child's eligibility.

§347.19. Foster Care Assistance Payments.

(a) A juvenile board shall ensure that the juvenile probation department submits to TJPC:

- (1) a request for reimbursement of substitute care costs by the tenth of the month following the month in which the services were provided.

(2) a request for reimbursement of IV-E related administrative expenses within 30 calendar days of the close of each TJPC fiscal quarter; and

(3) a request for correction of a prior month's reimbursement as soon as any discrepancy or need for adjustment is discovered.

(b) TJPC shall review all reimbursement requests for accuracy and forward the requests to TDPRS for payment. All payments are contingent on the availability of federal funds and shall be forwarded to juvenile probation departments upon receipt from TDPRS.

§347.21. Program Monitoring.

(a) The juvenile board shall allow staff from TJPC to review IV-E case management systems and case records, fiscal operations, and Title IV-E approved residential programs operated by the juvenile board for compliance with TJPC, TDPRS, and related federal standards. These reviews shall be conducted on a regular basis as determined by TJPC.

(b) TJPC shall notify the juvenile board in writing of the monitoring results.

(c) The juvenile board shall ensure that the juvenile probation department responds to written notice of noncompliance with a written corrective action plan that includes a projected date of compliance within 30 calendar days of receipt of the notice.

(d) If a juvenile probation department fails to respond to the written notice of noncompliance, or continues to be out of compliance with one or more of these rules, then TJPC may pursue further action, which may include one or more of the following:

(1) arranging a meeting with the juvenile probation department to discuss:

(A) problems with noncompliance and reasons for noncompliance;

(B) identification of needed resources to assist with correcting problem areas; and

(C) strategies to correct problem areas;

(2) requiring a written corrective action plan and expected date of compliance to be submitted to TJPC within 30 calendar days of conference date;

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(3) suspending federal funds to the juvenile probation department temporarily until compliance with federal standards is accomplished;

(4) requiring the juvenile probation department to reimburse funds to TJPC; and

(5) terminating the IV-E contract between TJPC and the juvenile board.